

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

DEC 29 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ELIZABETH MORRIS and ALAN C.  
BAKER,

Plaintiffs - Appellees,

v.

U.S. ARMY CORPS OF ENGINEERS;  
et al.,

Defendants - Appellants.

No. 14-36049

D.C. No. 3:13-cv-00336-BLW  
U.S. District Court for Idaho,  
Moscow

**ORDER SETTING  
ASSESSMENT CONFERENCE**

**Date: February 3, 2015**  
**Time: 11:00 a.m. Pacific Time**

The Mediation Program of the Ninth Circuit Court of Appeals facilitates settlement while appeals are pending. See Fed. R. App. P. 33 and Ninth Circuit Rule 33-1.

The court has scheduled a telephone settlement assessment conference at the date and time listed above with counsel to discuss whether this case is appropriate for participation in the Mediation Program. Chief Circuit Mediator Claudia L. Bernard will initiate the conference call by calling counsel shown on the attached list. Please be available for the call at least five minutes before the scheduled time.

Counsel should review the attached list and inform the Mediation Assistant by email (beatriz\_smith@ca9.uscourts.gov) at least 72 hours in advance of the

scheduled call of any corrections to the list, including the names of any attorneys who will not be participating in the conference and the direct dial telephone number of any participant if it is not listed. Also, please notify the mediator immediately by email ([claudia\\_bernard@ca9.uscourts.gov](mailto:claudia_bernard@ca9.uscourts.gov)) if the dispute is settled, the appeal is dismissed or if counsel has an unavoidable scheduling conflict. Please copy all counsel on any such communications.

All discussions that take place in the context of the assessment conference are strictly confidential. **See** Circuit Rule 33-1.

For more detailed information about the assessment conference, confidentiality, the Mediation Program and its procedures generally, please see the attachment to this order and the Mediation Program web site:

[www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation).

**The briefing schedule previously set by the court remains in effect.**

FOR THE COURT:

Beatriz Smith  
Deputy Clerk

bs/mediation

## LIST OF CONFERENCE PARTICIPANTS

ELIZABETH MORRIS; et al.  
Plaintiff - Appellee,

John L. Runft  
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Runft & Steele Law Offices, PLLC

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Mountain States Legal Foundation

v.

U.S. ARMY CORPS OF ENGINEERS;  
et al.  
Defendant - Appellant,

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OFFICE OF THE U.S. ATTORNEY

Daniel Riess  
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U.S. DEPARTMENT OF JUSTICE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIRCUIT MEDIATION OFFICE

Website: [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation)

Email: [claudia\\_bernard@ca9.uscourts.gov](mailto:claudia_bernard@ca9.uscourts.gov)

Phone: 415-355-7900 Fax: 415-355-8566

**INFORMATION ABOUT ASSESSMENT CONFERENCES**

**Overview of Purpose and Participants**

- The purpose of the assessment conference is to provide an opportunity for counsel and the Circuit Mediator to have a frank discussion about settlement. The mediator will explore the parties' interests in settlement and, if appropriate, work with counsel to design a process to pursue resolution of the dispute.
- The conference will be conducted by one of the nine Circuit Mediators, all of whom are court employees with extensive mediation and litigation experience. The Circuit Mediators are authorized to file orders on most procedural matters, including vacating or moving the briefing schedule.
- Counsel for all parties who intend to file briefs in the case should participate in the assessment conference. The lawyer with the closest relationship to the client should be on the call. Clients are neither expected nor required to participate in the assessment conference.
- In advance of the conference, counsel should have a discussion with their clients about their goals in the litigation, its possible costs and outcomes (good and bad), the potential for further legal proceedings, and what issues beyond the litigation might be explored in mediation. (Go to [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation) for a list of questions for exploring the suitability of the dispute for settlement.)
- During the conference, counsel and the Circuit Mediator will discuss the factual and legal background of the dispute, the legal issues involved in the litigation and on appeal, any related legal proceedings, and any other considerations that may affect the parties' willingness to engage in settlement discussions. The scope of discussions is not limited to the issues on appeal: it may include related legal proceedings or any other issues between the parties.

## **Confidentiality**

- Settlement-related information disclosed to a Circuit Mediator will be kept confidential and will not be disclosed to the judges deciding the appeal or to any other person outside the Mediation Program participants. Ninth Cir. R. 33-1.
- All participants in the assessment conference are required to abide by the court's confidentiality rules, which are set forth in Rule 33-1 and can be found at [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation). With limited exceptions, any communication made by the Circuit Mediator or any participant during the conference may not be used in any pending or future proceeding in this court or any other forum and may not be disclosed to anyone who is not a participant. Ninth Cir. 33-1.

## **Likely Outcomes of Assessment Conference**

- At the conclusion of the assessment conference, the Circuit Mediator may confirm in an order the agreements of the parties regarding the scope, process and timing of any further settlement efforts. Typical settlement processes include in-person mediation sessions, telephone settlement dialogues facilitated by the Circuit Mediator, or direct discussions between counsel.
- The parties may agree to defer briefing in order to focus on settlement efforts or to provide an opportunity for circumstances to develop that might make settlement more likely. In most cases, the deferral of briefing will not delay disposition of the appeal, since the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for decision.
- At any point that the parties choose not to pursue settlement efforts, the Circuit Mediator will work with the parties to resolve any outstanding procedural issues and will enter orders effectuating any procedural agreements.

**More information is available on the Mediation Circuit link on the Ninth Circuit website [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation).**